DECLARATION OF KAVITA BALA, PH.D.

I, Kavita Bala, Ph.D., declare as follows:

1. I have been the Provost of Cornell University ("Cornell" or the "University") since January 1, 2025. I previously served as the inaugural Dean of the Cornell Ann S. Bowers College of Computing and Information Science. I make this declaration in further support of the Plaintiffs' Emergency Motion for a Temporary Restraining Order.

2. I have personal knowledge of the contents of this declaration, or have knowledge of the matters based on my review of information and records gathered by Cornell personnel, and could testify thereto.

3. On April 14, 2025 at 10:23 PM, Cornell received an email from a Grants Management Specialist in the Department of Energy's ("DOE") Office of Science Consolidated Service Center. The email contained three attachments: a copy of DOE's Policy Flash 2025-22; a letter purporting to "conditionally terminat[e]" twenty-three DOE awards to Cornell on thirty days' notice; and a second letter purporting to "conditionally terminat[e]" an additional twenty-three DOE awards to Cornell, also on thirty days' notice. A copy of the email and its attachments is attached to this declaration as Exhibit A.

4. The stated reason for the letters is that these existing awards (all issued prior to April 11, 2025) allow for indirect cost recovery at Cornell's federally negotiated rate, instead of the fifteen percent cap on higher education indirect cost recovery that DOE announced in Policy Flash 2025-22 on April 11, 2025. The termination letters state that Cornell "may avoid termination of these awards by . . . confirming your agreement to an updated indirect cost rate of 15 percent for each of your awards effective as of May 14, 2025." (Exh. A.)

5. These forty-six awards had a total lifetime project value of approximately $99,500,000. Of that amount, approximately $26,000,000 remains to be spent. Using Cornell's average indirect cost recovery rate on these DOE awards, approximately $7,275,488 of that amount would be for indirect costs. If Cornell were to agree to the fifteen percent cap, DOE funding on these existing awards would be reduced by approximately $5,500,000 over the remaining lifetime of the awards.

6. Cornell has already budgeted for indirect cost recovery in its current and upcoming fiscal years for these awards based on the indirect cost rate previously negotiated with the federal government. While the University is continuing to evaluate the impact of the letters, DOE is presenting Cornell with a Hobson's choice: agree to the unlawful fifteen percent cap announced in the DOE Policy Flash and lose $5,500,000 on these forty-six awards alone, or insist that DOE honor Cornell's existing negotiated cost recovery rate, and be punished by losing the awards altogether.

7. Either option would result in immediate and significant consequences for Cornell. The University does not have sufficient budgeted operational funds to cover a sudden structural decrease in indirect cost recovery for existing awards on an ongoing basis, and would be required to consider layoffs, both for research staff and research administration officers and other employees of the university who perform critical but indirect work in support of sponsored activity, and reductions in administrative costs necessary for research services. For example, Cornell would be required to examine each grant to determine whether layoffs would be required as a result of the partial or total loss of funding for an award, and also to determine which resources currently supported by the indirect cost recovery on that award would need to be reduced or eliminated altogether. The University may be required to close research facilities, postpone equipment and

material investments, and limit the number of graduate students admitted in DOE-supported fields, all of which will diminish Cornell's ability to undertake this type of research in the future, even if the DOE Policy Flash were rescinded or invalidated.

8. Even being put to this choice is already causing Cornell harm. The process of identifying the potential need for layoffs, facility closures, investment delays, and other cost-cutting measures must begin very soon, and be completed well before thirty days have elapsed. And, many of these kinds of decisions are difficult, if not impossible, to reverse.

9. Even if the University could locate institutional funding to temporarily support these staff, equipment, and maintenance costs—and that is not a certainty—that would reduce the availability of those funds for other significant University needs that are not currently supported by federal awards. This would also impact the other federally sponsored research activities Cornell has been selected to undertake by other agencies that rely on the same facilities and administration costs that the DOE awards help to support.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Ithaca, New York
April 15, 2025

K Bala

KAVITA BALA, PH.D.

Exhibit A

From:	Johnson, Gwendolyn
To:	Cornell Research Awards
Subject:	Notification of Revised Indirect Rate Notification for Institutes of Higher Education
Date:	Monday, April 14, 2025 10:23:31 PM
Attachments:	image001.png PF2025-22 Adjusting Department of Energy Grant Policy for Institutions of Higher Education.pdf DOE - IHE Indirect Rate Notification 4.11 - CORNELL UNIVERSITY.pdf DOE - IHE Indirect Rate Notification 4.11 - CORNELL UNIVERSITY (2).pdf
Importance:	High

Dear Business Officer:

Please refer to the attached official notification of Indirect Rate Adjustment and the DOE Grant Policy guidance that accompanies it for your review and action.

Regards,

Gwendolyn R. Johnson
Grants Management Specialist
Office of Grants and Cooperative Agreements
Financial Assistance Division (CA-211)
Office of Science Consolidated Service Center
U.S. Department of Energy
☎630-252-2739
🖷 630-252-2522
✉ Email: gwendolyn.johnson@science.doe.gov

U.S. Department of ENERGY | Office of Science

Please only print email when necessary

POLICY FLASH 2025-22

DATE: April 11, 2025

TO: HCAs/Procurement Directors/Contracting Officers/Grants Officers

FROM: Director
Office of Acquisition Management

SUBJECT: Adjusting Department of Energy Grant Policy for Institutions of Higher Education (IHE)

BACKGROUND: Pursuant to 5 U.S.C. 553(a)(2), the Department of Energy ("Department") is updating its policy with respect to Department grants awarded to institutions of higher education (IHEs).

Through its grant programs, the Department funds Department-sanctioned research. A portion of the funding goes to "indirect costs", which include both facilities and administration costs. *See* 2 C.F.R. 200.414(a). "Facilities costs" comprise "depreciation on buildings, equipment and capital improvements, and operations and maintenance expenses," while "administration costs" are "general administration and [other] general expenses," like funding for "the director's office, accounting, [and] personnel." *Id.*

While the Department is cognizant that many grant recipients use indirect cost payments to effectuate research funded by the Department's grant awards, these payments are not for the Department's direct research funding. *See* 89 Fed. Reg. 30046-30093. As these funds are entrusted to the Department by the American people, the Department must ensure it is putting them to appropriate use on grant programs. To improve efficiency and curtail costs where appropriate, the Department seeks to better balance the financial needs of grant recipients with the Department's obligation to responsibly manage federal funds.

This memorandum accordingly sets forth the Department's updated policies, procedures, and general decision-making criteria for establishing indirect cost rates when awarding grants to IHEs; these policies, procedures, and criteria are intended to better balance the Department's dual responsibilities to grant recipients and the American people.

The Department is initially taking this action only with respect to IHEs. *See* 2 C.F.R. 200.414(c)(1); *id.* 200.1.

ESTABLISHING APPROPRIATE INDIRECT COST RATES:

At present, the Department's indirect cost rate for IHE grants is typically negotiated by either "the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provide[d] more funds to the [relevant] educational institution for the most recent three years." 2 C.F.R. pt. 200, app. III(C)(11)(a)(1). Though the Department generally must accept this negotiated rate, *see* 2 C.F.R. 200.414(c)(1), it may deviate therefrom for "a class of Federal awards" after implementing and making publicly available "the policies, procedures and general decision-making criteria" it will follow when seeking and justifying deviations. *Id.* 200.414(c)(1), (3). A "class of Federal awards" is defined to include "a group of Federal awards . . . to a specific type of recipient or group of recipients," such as grants to IHEs—the class relevant to this policy update. *Id.* 200.1.

For the reasons set forth in this memorandum, hereinafter, the Department will no longer use the negotiated indirect cost rate for grants awarded to IHEs. Instead, it is setting a standardized 15 percent indirect cost rate for all grant awards to IHEs. This is at the high end of the "up to 15 percent" *de minimis* rate permitted by government-wide regulation. *See, e.g.*, 2 C.F.R. 200.414(f). Consistent with this memorandum, the Department is undertaking action to terminate all grant awards to IHEs that do not conform with this updated policy. *See* 2 C.F.R. 200.340(a), (b). Recipients subject to termination will receive separate notice and guidance.

All future Department grant awards to IHEs will default to this 15 percent indirect cost rate. This system will better balance the Department's twin aims of funding meaningful research and upholding its fiduciary duties to the American people.

Additional information is forthcoming.

This flash will be available online at the following website:
http://energy.gov/management/listings/policy-flashes

For DOE questions concerning this policy flash, please email: ihe-icr-response@hq.doe.gov

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF SCIENCE CONSOLIDATED SERVICE CENTER
GRANTS AND COOPERATIVE AGREEMENTS

April 14, 2025

CORNELL UNIVERSITY

Dear Business Officer:

This letter provides an update from the United States Department of Energy (Department) regarding your federal grants listed below:
DE-FG02-05ER15687; DE-SC0004911; DE-SC0008037; DE-SC0008431; DE-SC0010560; DE-SC0019250; DE-SC0019762; DE-SC0019997; DE-SC002014; DE-SC0021000; DE-SC0021003; DE-SC0021026; DE-SC0021038; DE-SC0021941; DE-SC0022860; DE-SC0023048; DE-SC0023896; DE-SC0023905; DE-SC0024046; DE-SC0024137; DE-SC0024172; DE-SC0024175; DE-SC0024287

Pursuant to the Department's policy memorandum dated April 11, 2025, entitled *Adjusting Department of Energy Grant Policy for Institutions of Higher Education*, it is the Department's policy to improve efficiency and curtail costs where appropriate to "better balance the Department's twin aims of funding meaningful research and upholding its fiduciary duties to the American people." The Department has accordingly set "a standardized 15 percent indirect cost rate" for grant awards to the class consisting of institutions of higher education.

To this end, the Department has undertaken a review of all Department grant awards to ensure that the awards comply with this updated Department policy. During this review, the Department determined that the grants listed above are not currently in compliance with the policy memorandum.

Therefore, in accordance with the foregoing, the policies set forth in the Department's April 11, 2025 memorandum, applicable regulations, and the terms of your grant awards, the Department is conditionally terminating your grant awards, effective thirty (30) days from the date of this notice. *See* 2 C.F.R. 200.340(a), (b).

This termination is conditional. You may avoid termination of these awards by having the duly authorized representative send an email to ihe-icr-response@hq.doe.gov and Michael.Neff@science.doe.gov. A letter must also be sent via first-class mail or overnight carrier to the Department official identified in the signature block below, confirming your agreement to an updated indirect cost rate of 15 percent for each of your awards effective as of May 14, 2025.

This confirmation notice should include:

1. a copy of this notice;
2. the date you received this notice;
3. confirmation that you accept an updated indirect cost rate of 15 percent as of May 14, 2025; and
4. any other documents or information you deem appropriate.

See 2 C.F.R. § 200.342.

The agreed update to the grant award indirect cost rate will be effective as of May 14, 2025.

If you wish to allow any of the above grants to terminate, costs incurred by you after termination are allowable only if (a) those costs were properly incurred by you before the effective date of this termination, and not in anticipation of it; and (b) those costs would be allowable if your federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect. *See* 2 C.F.R. § 200.343. You are encouraged to carefully review and discharge your closeout responsibilities set forth in 2 C.F.R. § 200.344-45 and your award agreement. Those responsibilities include, but are not limited to, your obligation to "promptly refund any unobligated funds" that have been paid out but "are not authorized to be retained." *See* 2 C.F.R. § 200.344(g). Failure to do so will result in the Department filing a report documenting your "material failure to comply with the terms and conditions of" this award on SAM.gov. *See id.* § 200.344(i). Finally, you are reminded of your duties under your agreement and Department guidance regarding retention of grant records and the Department's audit rights as stated in your grant documents.

Thank you,

Michael Neff
Contracting Officer
Michael.Neff@science.doe.gov
9800 S. Cass Avenue
Lemont, IL 60439

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF SCIENCE CONSOLIDATED SERVICE CENTER
GRANTS AND COOPERATIVE AGREEMENTS

April 14, 2025

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